

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Fidel Angel Hernandez Vasquez,

Petitioner,

v.

Case No. 2:14-cv-2592

United States of America,

Respondent.

OPINION AND ORDER

Petitioner filed the instant action as a motion to vacate under 28 U.S.C. §2255. In a report and recommendation filed on March 12, 2015, the magistrate judge noted that plaintiff was previously convicted in the Franklin County Court of Common Pleas in 2003, not in federal court. Petitioner has now been released from state custody and is currently in the custody of the United States Department of Homeland Security Immigration and Customs Enforcement, where he awaits a decision on whether he will be deported to El Salvador. The magistrate judge characterized the petition as a request for the issuance of a writ of coram nobis pursuant to 28 U.S.C. §1651(a). The magistrate judge then noted that petitioner seeks to vacate his conviction because he was allegedly not informed by his counsel of the risk of deportation which could follow his guilty plea in violation of Padilla v. Kentucky, 559 U.S. 356 (2010). The magistrate judge then concluded that because the Supreme Court held in Chaidez v. United States, 133 S.Ct. 1103, 1106-7 (2013), that Padilla did not apply retroactively to convictions which became final prior to the issuance of that decision in 2010, petitioner is not entitled to the relief sought. The magistrate judge recommended that the

petition be dismissed.

The report and recommendation specifically advised the parties that the failure to object to the report and recommendation within fourteen days "will result in a waiver of the right to de novo review by the District Judge and waiver of the right to appeal the judgment of the District Court." Doc. 13, p. 3. Noting that the time period for filing objections to the report and recommendation has expired, and that no objections have been filed, the court adopts the report and recommendation (Doc. 13). The petition is dismissed. Petitioner's motion for appointment of counsel (Doc. 2) is denied as moot.

Date: April 10, 2015

s/James L. Graham
James L. Graham
United States District Judge